

Calendar No. 254

105TH CONGRESS }
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SENATE

{ REPORT
105-135

EXTENSION OF HYDROELECTRIC PROJECT IN THE STATE OF NEW YORK

NOVEMBER 4, 1997.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural
Resources, submitted the following

REPORT

[To accompany H.R. 848]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 848) to extend the deadline under the Federal Power Act applicable to the construction of the AuSable Hydroelectric Project in New York, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE OF THE MEASURE

The purpose of H.R. 848 is to extend the deadline contained in the Federal Power Act for the commencement of construction of the FERC-licensed AuSable hydroelectric project (project number 10836) located in the State of New York.

BACKGROUND AND NEED

Section 13 of the Federal Power Act requires a licensee to commence the construction of a hydroelectric project within two years of the date of the issuance of the license. That deadline can be extended by the Federal Energy Regulatory Commission (FERC) one time for as much as two additional years. If construction has not commenced at the end of the time period, the license is terminated by the FERC. Thus, in the absence of this legislation, the FERC would terminate the license at the end of the time period authorized under the Federal Power Act for commencement of construction.

It is very difficult for a hydroelectric project sponsor to secure financing until it has a power sales contract, and generally a licensee cannot secure a contract until it has been granted a license.

H.R. 848 would extend the time allowed to begin construction of hydroelectric project numbered 10836 for three consecutive two-year periods. This assures the project additional time to secure a contract and financing.

LEGISLATIVE HISTORY

H.R. 848 was passed by the House on June 10, 1997. A hearing was held by the Subcommittee on Water and Power on October 7, 1997.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on October 22, 1997, by a voice vote with a quorum present, recommends that the Senate pass the bill without amendment.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 24, 1997.

Hon. FRANK H. MURKOSWKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 848, an act to extend the deadline under the Federal Power Act applicable to the construction of the AuSable hydroelectric project in New York, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact for this estimate is Kim Cawley.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 848—An act to extend the deadline under the Federal Power Act applicable to the construction of the AuSable hydroelectric project in New York, and for other purposes

CBO estimates that enacting H.R. 848 would have no net effect on the federal budget. The legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not affect the budgets of state, local, or tribal governments.

H.R. 848 would extend for up to six years the deadline for construction of a hydroelectric project currently subject to licensing by the Federal Energy Regulatory Commission (FERC). The proposed extension is for FERC project number 10836. This provision may have a minor impact on FERC's workload. Because FERC recovers 100 percent of its costs through user fees, any change in its administrative costs would be offset by an equal change in the fees that the commission charges. Hence, the provision would have no net budgetary impact.

Because FERC's administrative costs are limited in annual appropriations, enactment of this legislation would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply.

The CBO staff contact for this estimate is Kim Cawley. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out this measure.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the provisions of the bill. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of this measure.

EXECUTIVE COMMUNICATIONS

The pertinent communications received by the Committee from the Federal Energy Regulatory Commission setting forth Executive agency relating to this measure are set forth below:

STATEMENT OF KRISTINA NYGAARD, ASSISTANT GENERAL COUNSEL, HYDROELECTRIC LICENSING, FEDERAL ENERGY REGULATORY COMMISSION

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE: My name is Kristina Nygaard, and I am Assistant General Counsel for Hydroelectric Licensing at the Federal Energy Regulatory Commission. I am appearing before you as a Commission staff witness and do not seek for individual members of the Commission.

Thank you for the opportunity to be here today to comment on a bill affecting the Federal Energy Regulatory Commission's regulation of non-federal hydropower projects pursuant to Part I of the Federal Power Act and related statutes.

H.R. 848 would extend the statutory deadline for the start of construction of the licensed project.

H.R. 848 AND H.R. 1184: EXTENDING DEADLINES TO
COMMENCE PROJECT CONSTRUCTION

The two projects in question are the 800-kilowatt AuSable Project (FERC No. 10836), to be located in Clinton and Essex Counties, New York, and the 4-megawatt Bear Creek Project (FERC No. 10371), to be located in Skagit County, Washington. Both projects have received the maximum four years for commencement of construction. H.R. 848 and section 1 of H.R. 1184 would respectively require and authorize the Commission, upon the request of the licensee and in accordance with the good faith, due diligence, and public interest requirements of Section 13 of the Federal Power Act, to extend the deadline for up to six additional years, for a total of ten years from the date of licensing.

As a general principle, we do not support the enactment of bills requiring construction deadline extensions for individual projects. However, if such extensions are authorized by the Congress, as a matter of policy we would object to granting a licensee more than ten years from the issuance date of the license to commence construction. In our view, ten years is a more than reasonable period for a licensee to secure financing and complete final design of a licensed project. Since the two bills in question would not extend the deadline beyond the ten-year mark, we have no specific objections to them. I understand that section 4 of S. 439, the omnibus hydro bill approved by the Senate Energy and Natural Resources Committee on September 24, would give the Commission generic authority to extend construction commencement deadlines for up to ten years. In addition to extending commencement of construction deadlines, H.R. 848 and 1184 provide for the reinstatement of the licenses in question if they have expired, as one of them has. Attached to my testimony are detailed comments about the bills and the projects they concern.

APPENDIX TO TESTIMONY OF KRISTINA NYGAARD

H.R. 848

H.R. 848 would reinstate the license for Project No. 10836 and would require the Commission, upon the request of the licensee and in accordance with the good faith, due diligence, and public interest requirements of Section 13 of the Federal Power Act, to extend for up to six years (10 years after licensing) the deadline for commencement of project construction.

PROJECT NO. 10836

On October 27, 1992, the Commission issued a license to Friends of Keesville Company to construct, operate, and maintain the 800-kilowatt AuSable Project No. 10836, to be located in Clinton and Essex Counties, New York. The deadline for the commencement of project construction,

originally October 26, 1994, was extended to October 26, 1996. The license was terminated on February 5, 1997, for failure to commence construction.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by H.R. 848, as ordered reported.

